

(c) *Procedures for a denial recommendation.* (1) If the Chief Health, Safety and Security Officer recommends denial of a variance application, the Chief Health, Safety and Security Officer must notify the CSO of the denial recommendation and the grounds for the denial recommendation.

(2) Upon receipt of a denial recommendation, the CSO may:

(i) Notify the contractor that the variance application is denied on the grounds cited by the Chief Health, Safety and Security Officer; or

(ii) Forward to the Under Secretary the variance application, the denial recommendation, the grounds for the denial recommendation, and any information that supports an action different than that recommended by the Chief Health, Safety and Security Officer.

(3) If the CSO forwards the application to the Under Secretary, the procedures in paragraphs (a)(2), (3), (4) and (5) of this section apply.

(4) A denial of an application pursuant to this section shall be without prejudice to submitting of another application

(d) *Grounds for denial of a variance.* A variance may be denied if:

(1) Enforcement of the violation would be handled as a *de minimis* violation (defined as a deviation from the requirement of a standard that has no direct or immediate relationship to safety or health, and no enforcement action will be taken);

(2) When a variance is not necessary for the conditions, practice, means, methods, operations, or processes used or proposed to be used by contractor;

(3) Contractor does not demonstrate that the approval criteria are met.

[71 FR 6931, Feb. 9, 2006, as amended at 71 FR 68733, Nov. 28, 2006]

§ 851.33 Terms and conditions.

A variance may contain appropriate terms and conditions including, but not limited to, provisions that:

- (a) Limit its duration;
- (b) Require alternative action;
- (c) Require partial compliance; and
- (d) Establish a schedule for full or partial compliance.

§ 851.34 Requests for conferences.

(a) Within the time allotted by a notice of the filling of an application, any affected contractor or worker may file with the Chief Health, Safety and Security Officer a request for a conference on the application for a variance.

(b) A request for a conference filed pursuant to paragraph (a) of this section must include:

(1) A concise statement explaining how the contractor or worker would be affected by the variance applied for, including relevant facts;

(2) A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and

(3) Any other views or arguments on any issue of fact or law presented.

(c) The Chief Health, Safety and Security Officer, or designee, must respond to a request within fifteen days and, if the request is granted, indicate the time and place of the conference and the DOE participants in the conference.

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Subpart E—Enforcement Process

§ 851.40 Investigations and inspections.

(a) The Director may initiate and conduct investigations and inspections relating to the scope, nature and extent of compliance by a contractor with the requirements of this part and take such action as the Director deems necessary and appropriate to the conduct of the investigation or inspection. DOE Enforcement Officers have the right to enter work areas without delay to the extent practicable, to conduct inspections under this subpart.

(b) Contractors must fully cooperate with the Director during all phases of the enforcement process and provide complete and accurate records and documentation as requested by the Director during investigation or inspection activities.

(c) Any worker or worker representative may request that the Director initiate an investigation or inspection